

# House Study Bill 227

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
PUBLIC HEALTH/BOARD OF  
PHARMACY EXAMINERS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act making changes relating to the practice of pharmacy,  
2 establishing and appropriating fees, and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1292DP 81  
5 rn/pj/5

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1 1 Section 1. Section 155A.3, subsection 11, Code 2005, is  
1 2 amended to read as follows:  
1 3 11. "Dispense" means to deliver a prescription drug,  
1 4 ~~device~~, or controlled substance to an ultimate user or  
1 5 research subject by or pursuant to the lawful prescription  
1 6 drug order or medication order of a practitioner, including  
1 7 the prescribing, administering, packaging, labeling, or  
1 8 compounding necessary to prepare the substance for that  
1 9 delivery.

1 10 Sec. 2. Section 155A.3, Code 2005, is amended by adding  
1 11 the following new subsection:

1 12 NEW SUBSECTION. 23A. "Pedigree" means a recording of each  
1 13 distribution of any given drug or device, from the sale by the  
1 14 manufacturer through acquisition and sale by any wholesaler,  
1 15 pursuant to rules adopted by the board.

1 16 Sec. 3. Section 155A.3, subsection 33, paragraph b, Code  
1 17 2005, is amended to read as follows:

1 18 b. A drug or device that under federal law is required,  
1 19 prior to being dispensed or delivered, to be labeled with  
1 20 ~~either one~~ of the following statements:

1 21 (1) Caution: Federal law prohibits dispensing without a  
1 22 prescription.

1 23 (2) Caution: Federal law restricts this drug to use by or  
1 24 on the order of a licensed veterinarian.

1 25 (3) Caution: Federal law restricts this device to sale  
1 26 by, or on the order of, a physician.

1 27 (4) Rx only.

1 28 Sec. 4. Section 155A.3, subsection 35, Code 2005, is  
1 29 amended to read as follows:

1 30 35. "Proprietary medicine" or "over-the-counter medicine"  
1 31 means a nonnarcotic drug or device that may be sold without a  
1 32 prescription and that is labeled and packaged in compliance  
1 33 with applicable state or federal law.

1 34 Sec. 5. Section 155A.3, subsection 38, Code 2005, is  
1 35 amended to read as follows:

2 1 38. "Wholesaler" means a person operating or maintaining,  
2 2 either within or outside this state, a manufacturing plant,  
2 3 wholesale distribution center, wholesale business, or any  
2 4 other business in which prescription drugs or devices,  
2 5 medicinal chemicals, medicines, or poisons are sold,  
2 6 manufactured, compounded, dispensed, stocked, exposed,  
2 7 distributed from, or offered for sale at wholesale in this  
2 8 state. "Wholesaler" does not include those wholesalers who  
2 9 sell only proprietary or over-the-counter medicines.

2 10 Sec. 6. Section 155A.4, subsection 2, paragraph a, Code  
2 11 2005, is amended to read as follows:

2 12 a. A ~~manufacturer or~~ wholesaler to distribute prescription  
2 13 drugs or devices as provided by state or federal law.

2 14 Sec. 7. Section 155A.13, subsection 6, unnumbered  
2 15 paragraph 1, Code 2005, is amended to read as follows:

2 16 To qualify for a pharmacy license, the applicant shall  
2 17 submit to the board a license fee as determined by the board  
2 18 and a completed application on a form prescribed by the board

2 19 that shall include the following information and. The  
2 20 application shall include the following and such other  
2 21 information as required by rules of the board and shall be

2 22 given under oath:

2 23 Sec. 8. Section 155A.17, subsection 2, Code 2005, is  
2 24 amended to read as follows:

2 25 2. The board shall establish standards for drug wholesaler  
2 26 licensure and may define specific types of wholesaler  
2 27 licenses. The board may deny, suspend, or revoke a drug  
2 28 wholesale license for failure to meet the applicable standards  
2 29 or for a violation of the laws of this state, another state,  
2 30 or the United States relating to prescription drugs, devices,  
2 31 or controlled substances, or for a violation of this chapter,  
2 32 chapter 124, 124A, 124B, 126, or 205, or a rule of the board.

2 33 Sec. 9. Section 155A.19, subsection 1, paragraph f, Code  
2 34 2005, is amended by striking the paragraph and inserting in  
2 35 lieu thereof the following:

3 1 f. Change of legal name or doing-business-as name.

3 2 Sec. 10. Section 155A.19, Code 2005, is amended by adding  
3 3 the following new subsection:

3 4 NEW SUBSECTION. 3. A wholesaler shall report in writing  
3 5 to the board, pursuant to its rules, the following:

3 6 a. Permanent closing or discontinuation of wholesale  
3 7 distributions into this state.

3 8 b. Change of ownership.

3 9 c. Change of location.

3 10 d. Change of the wholesaler's responsible individual.

3 11 e. Change of legal name or doing-business-as name.

3 12 f. Theft or significant loss of any controlled substance  
3 13 on discovery of the theft or loss.

3 14 g. Disasters, accidents, and emergencies that may affect  
3 15 the strength, purity, or labeling of drugs, medications,  
3 16 devices, or other materials used in the diagnosis or the  
3 17 treatment of injury, illness, and disease.

3 18 h. Other information or activities as required by rule.

3 19 Sec. 11. Section 155A.20, subsection 1, Code 2005, is  
3 20 amended to read as follows:

3 21 1. A person, other than a pharmacy or wholesaler licensed  
3 22 under this chapter, shall not display in or on any store,  
3 23 internet site, or place of business, nor use in any

3 24 advertising or promotional literature, communication, or  
3 25 representation, the word or words: "apothecary", "drug",

3 26 "drug store", or "pharmacy", either in English or any other  
3 27 language, any other word or combination of words of the same

3 28 or similar meaning, or any graphic representation in a manner  
3 29 that would mislead the public unless it is a pharmacy or drug

~~3 30 wholesaler licensed under this chapter.~~

3 31 Sec. 12. Section 155A.21, Code 2005, is amended to read as  
3 32 follows:

3 33 155A.21 UNLAWFUL POSSESSION OF PRESCRIPTION DRUG OR DEVICE  
3 34 == PENALTY.

3 35 1. A person found in possession of a drug or device  
4 1 limited to dispensation by prescription, unless the drug or  
4 2 device was so lawfully dispensed, commits a serious  
4 3 misdemeanor.

4 4 2. Subsection 1 does not apply to a licensed pharmacy,  
4 5 licensed wholesaler, physician, veterinarian, dentist,  
4 6 podiatric physician, therapeutically certified optometrist,  
4 7 advanced registered nurse practitioner, physician assistant, a  
4 8 nurse acting under the direction of a physician, or the board  
4 9 of pharmacy examiners, its officers, agents, inspectors, and  
4 10 representatives, nor to a common carrier, manufacturer's  
4 11 representative, or messenger when transporting the drug or  
4 12 device in the same unbroken package in which the drug or  
4 13 device was delivered to that person for transportation.

4 14 Sec. 13. Section 155A.23, Code 2005, is amended to read as  
4 15 follows:

4 16 155A.23 PROHIBITED ACTS.

4 17 A person shall not perform or cause the performance of or  
4 18 aid and abet any of the following acts:

4 19 1. ~~Obtain or attempt~~ Obtaining or attempting to obtain a  
4 20 prescription drug or device or procure or attempt procuring or  
4 21 attempting to procure the administration of a prescription  
4 22 drug or device by:

4 23 a. ~~Fraud~~ Engaging in fraud, deceit, misrepresentation, or  
4 24 subterfuge.

4 25 b. ~~Forgery or alteration of~~ Forging or altering a written,  
4 26 electronic, or facsimile prescription or ~~of~~ any written,  
4 27 electronic, or facsimile order.

4 28 c. ~~Concealment of~~ Concealing a material fact.

4 29 d. ~~Use of~~ Using a false name or ~~the~~ giving ~~of~~ a false

4 30 address.

4 31 2. Willfully ~~make~~ making a false statement in any  
4 32 prescription, report, or record required by this chapter.

4 33 3. For the purpose of obtaining a prescription drug or  
4 34 device, falsely ~~assume~~ assuming the title of or ~~claim~~ claiming  
4 35 to be a manufacturer, wholesaler, pharmacist, pharmacy owner,  
5 1 physician, dentist, podiatric physician, veterinarian, or  
5 2 other authorized person.

5 3 4. ~~Make or utter~~ Making or uttering any false or forged  
5 4 oral, written, electronic, or facsimile prescription or oral,  
5 5 written, electronic, or facsimile order.

5 6 5. ~~Affix any false or forged label to a package or~~  
5 7 ~~receptacle containing prescription drugs~~ Forging,  
5 8 counterfeiting, simulating, or falsely representing any drug  
5 9 or device without the authority of the manufacturer, or using  
5 10 any mark, stamp, tag, label, or other identification device  
5 11 without the authorization of the manufacturer.

5 12 6. Manufacturing, repackaging, selling, delivering, or  
5 13 holding or offering for sale any drug or device that is  
5 14 adulterated, misbranded, counterfeit, suspected of being  
5 15 counterfeit, or that has otherwise been rendered unfit for  
5 16 distribution.

5 17 7. Adulterating, misbranding, or counterfeiting any drug  
5 18 or device.

5 19 8. Receiving any drug or device that is adulterated,  
5 20 misbranded, stolen, obtained by fraud or deceit, counterfeit,  
5 21 or suspected of being counterfeit, and delivering or  
5 22 proffering delivery of such drug or device for pay or  
5 23 otherwise.

5 24 9. Adulterating, mutilating, destroying, obliterating, or  
5 25 removing the whole or any part of the labeling of a drug or  
5 26 device or committing any other act with respect to a drug or  
5 27 device that results in the drug or device being misbranded.

5 28 10. Purchasing or receiving a drug or device from a person  
5 29 who is not licensed to distribute the drug or device to that  
5 30 purchaser or recipient.

5 31 11. Selling or transferring a drug or device to a person  
5 32 who is not authorized under the law of the jurisdiction in  
5 33 which the person receives the drug or device to purchase or  
5 34 possess the drug or device from the person selling or  
5 35 transferring the drug or device.

6 1 12. Failing to maintain or provide records as required by  
6 2 this chapter, chapter 124, or rules of the board.

6 3 13. Providing the board or any of its representatives or  
6 4 any state or federal official with false or fraudulent records  
6 5 or making false or fraudulent statements regarding any matter  
6 6 within the scope of this chapter, chapter 124, or rules of the  
6 7 board.

6 8 14. Distributing at wholesale any drug or device that  
6 9 meets any of the following conditions:

6 10 a. The drug or device was purchased by a public or private  
6 11 hospital or other health care entity.

6 12 b. The drug or device was donated or supplied at a reduced  
6 13 price to a charitable organization.

6 14 c. The drug or device was purchased from a person not  
6 15 licensed to distribute the drug or device.

6 16 d. The drug or device was stolen or obtained by fraud or  
6 17 deceit.

6 18 15. Failing to obtain a license or operating without a  
6 19 valid license when a license is required pursuant to this  
6 20 chapter or chapter 147.

6 21 16. Engaging in misrepresentation or fraud in the  
6 22 distribution of a drug or device.

6 23 17. Distributing a drug or device to a patient without a  
6 24 prescription drug order or medication order from a  
6 25 practitioner licensed by law to use or prescribe the drug or  
6 26 device.

6 27 18. Distributing a drug or device that was previously  
6 28 dispensed by a pharmacy or distributed by a practitioner  
6 29 except as provided by rules of the board.

6 30 19. Failing to report any prohibited act.

6 31 Information communicated to a physician in an unlawful  
6 32 effort to procure a prescription drug or device or to procure  
6 33 the administration of a prescription drug shall not be deemed  
6 34 a privileged communication.

6 35 Sec. 14. Section 155A.24, Code 2005, is amended to read as  
7 1 follows:

7 2 155A.24 PENALTIES.

7 3 1. Except as otherwise provided in this section, a  
7 4 person who violates a provision of section 155A.23 or who  
7 5 sells or offers for sale, gives away, or administers to

7 6 another person any prescription drug or device in violation of  
7 7 this chapter commits a public offense and shall be punished as  
7 8 follows:

7 9 a. If the prescription drug is a controlled substance, the  
7 10 person shall be punished pursuant to ~~section 124.401,~~  
7 11 ~~subsection 1, and section 124.411~~ chapter 124, division IV.

7 12 b. If the prescription drug is not a controlled substance,  
7 13 the person, upon conviction of a first offense, is guilty of a  
7 14 serious misdemeanor. For a second offense, or if in case of a  
7 15 first offense the offender previously has been convicted of  
7 16 any violation of the laws of the United States or of any  
7 17 state, territory, or district thereof relating to prescription  
7 18 drugs or devices, the offender is guilty of an aggravated  
7 19 misdemeanor. For a third or subsequent offense or if in the  
7 20 case of a second offense the offender previously has been  
7 21 convicted two or more times in the aggregate of any violation  
7 22 of the laws of the United States or of any state, territory,  
7 23 or district thereof relating to prescription drugs or devices,  
7 24 the offender is guilty of a class "D" felony.

7 25 2. A person who violates any provision of this chapter by  
7 26 selling, giving away, or administering any prescription drug  
7 27 or device to a minor is guilty of a class "C" felony.

7 28 3. A wholesaler who, with intent to defraud or deceive,  
7 29 fails to deliver to another person, when required by rules of  
7 30 the board, complete and accurate pedigree concerning a drug  
7 31 prior to transferring the drug to another person is guilty of  
7 32 a class "C" felony.

7 33 4. A wholesaler who, with intent to defraud or deceive,  
7 34 fails to acquire, when required by rules of the board,  
7 35 complete and accurate pedigree concerning a drug prior to  
8 1 obtaining the drug from another person is guilty of a class  
8 2 "C" felony.

8 3 5. A wholesaler who knowingly destroys, alters, conceals,  
8 4 or fails to maintain, as required by rules of the board,  
8 5 complete and accurate pedigree concerning any drug in the  
8 6 person's possession is guilty of a class "C" felony.

8 7 6. A wholesaler who is in possession of pedigree documents  
8 8 required by rules of the board, and who knowingly fails to  
8 9 authenticate the matters contained in the documents as  
8 10 required, and who nevertheless distributes or attempts to  
8 11 further distribute drugs is guilty of a class "C" felony.

8 12 7. A wholesaler who, with intent to defraud or deceive,  
8 13 falsely swears or certifies that the person has authenticated  
8 14 any documents related to the wholesale distribution of drugs  
8 15 or devices is guilty of a class "C" felony.

8 16 8. A wholesaler who knowingly forges, counterfeits, or  
8 17 falsely creates any pedigree, who falsely represents any  
8 18 factual matter contained in any pedigree, or who knowingly  
8 19 omits to record material information required to be recorded  
8 20 in a pedigree is guilty of a class "C" felony.

8 21 9. A wholesaler who knowingly purchases or receives drugs  
8 22 or devices from a person not authorized to distribute drugs or  
8 23 devices in wholesale distribution is guilty of a class "C"  
8 24 felony.

8 25 10. A wholesaler who knowingly sells, barter, brokers, or  
8 26 transfers a drug or device to a person not authorized to  
8 27 purchase the drug or device under the jurisdiction in which  
8 28 the person receives the drug or device in a wholesale  
8 29 distribution is guilty of a class "C" felony.

8 30 11. A person who knowingly possesses, actually or  
8 31 constructively, any amount of a contraband drug or device, who  
8 32 knowingly sells or delivers any amount of a contraband drug or  
8 33 device, or who possesses with intent to sell or deliver any  
8 34 amount of a contraband drug or device is guilty of a class "C"  
8 35 felony.

9 1 12. A person who knowingly forges, counterfeits, or  
9 2 falsely creates any label for a drug or device or who falsely  
9 3 represents any factual matter contained on any label of a drug  
9 4 or device is guilty of a class "C" felony.

9 5 13. A person who knowingly manufactures, purchases, sells,  
9 6 delivers, or brings into the state, or who is knowingly in  
9 7 actual or constructive possession of any amount of a  
9 8 contraband drug or device is guilty of a class "C" felony.

9 9 14. A person who knowingly manufactures, purchases, sells,  
9 10 delivers, or brings into the state, or who is knowingly in  
9 11 actual or constructive possession of any amount of a  
9 12 contraband drug or device, and whose acts result in the death  
9 13 of a person is guilty of a class "A" felony.

9 14 15. A person found guilty of any offense under this  
9 15 section or under chapter 124, division IV, under the authority  
9 16 of the court convicting and sentencing the person, shall order

9 17 that the person forfeit to the state, pursuant to chapter  
9 18 809A, any real or personal property that meets either of the  
9 19 following conditions:  
9 20 a. The property was used or intended to be used to commit,  
9 21 facilitate, or promote the commission of such offense.  
9 22 b. The property constitutes, derives from, or is traceable  
9 23 to the gross proceeds that the defendant obtained directly or  
9 24 indirectly as a result of the offense.  
9 25 Any property or assets subject to forfeiture under this  
9 26 subsection may be seized in the manner prescribed in chapter  
9 27 809A, and may be held as provided in that chapter. Moneys  
9 28 ordered forfeited, or proceeds from the sale of other assets  
9 29 ordered forfeited, shall be equitably divided among the board  
9 30 and other agencies involved in the investigation and  
9 31 prosecution that led to the conviction. Other property  
9 32 ordered forfeited after conviction of a defendant may, at the  
9 33 discretion of the investigating agencies, be placed into  
9 34 official use by the board or the agencies involved in the  
9 35 investigation and prosecution that led to the conviction.

10 1 16. This section does not prevent a licensed practitioner  
10 2 of medicine, dentistry, podiatry, nursing, veterinary  
10 3 medicine, optometry, or pharmacy from acts necessary in the  
10 4 ethical and legal performance of the practitioner's  
10 5 profession.

10 6 Sec. 15. Section 155A.27, subsection 1, Code 2005, is  
10 7 amended by adding the following new paragraph:

10 8 NEW PARAGRAPH. g. The indication or reason for  
10 9 prescribing the drug or device.

10 10 Sec. 16. NEW SECTION. 155A.40 CRIMINAL HISTORY RECORD  
10 11 CHECKS.

10 12 1. The board may request and obtain, notwithstanding  
10 13 section 692.2, subsection 5, criminal history data for any  
10 14 applicant for an initial or renewal license or registration  
10 15 issued pursuant to this chapter or chapter 147, any applicant  
10 16 for reinstatement of a license or registration issued pursuant  
10 17 to this chapter or chapter 147, or any licensee or registrant  
10 18 who is being monitored as a result of a board order or  
10 19 agreement resolving an administrative disciplinary action, for  
10 20 the purpose of evaluating the applicant's, licensee's, or  
10 21 registrant's eligibility for licensure, registration, or  
10 22 suitability for continued practice of the profession.  
10 23 Criminal history data may be requested for of all owners,  
10 24 managers, and principal employees of a pharmacy or drug  
10 25 wholesaler licensed pursuant to this chapter. The board shall  
10 26 adopt rules pursuant to chapter 17A to implement this section.  
10 27 The board shall inform the applicant, licensee, or registrant  
10 28 of the criminal history requirement and obtain a signed waiver  
10 29 from the applicant, licensee, or registrant prior to  
10 30 submitting a criminal history data request.

10 31 2. A request for criminal history data shall be submitted  
10 32 to the department of public safety, division of criminal  
10 33 investigation and bureau of identification, pursuant to  
10 34 section 692.2, subsection 1. The board may also require such  
10 35 applicants, licensees, and registrants to provide a full set  
11 1 of fingerprints, in a form and manner prescribed by the board.  
11 2 Such fingerprints may be submitted to the federal bureau of  
11 3 investigation through the state criminal history repository  
11 4 for a national criminal history check. The board may  
11 5 authorize alternate methods or sources for obtaining criminal  
11 6 history record information. The board may, in addition to any  
11 7 other fees, charge and collect such amounts as may be incurred  
11 8 by the board, the department of public safety, or the federal  
11 9 bureau of investigation in obtaining criminal history  
11 10 information. Amounts collected shall be considered repayment  
11 11 receipts as defined in section 8.2.

11 12 3. Criminal history information relating to an applicant,  
11 13 licensee, or registrant obtained by the board pursuant to this  
11 14 section is confidential. The board may, however, use such  
11 15 information in a license or registration denial proceeding.  
11 16 In a disciplinary proceeding, such information shall  
11 17 constitute investigative information under section 272C.6,  
11 18 subsection 4, and may be used only for purposes consistent  
11 19 with that section.

11 20 Sec. 17. NEW SECTION. 155A.41 CONTINUOUS QUALITY  
11 21 IMPROVEMENT PROGRAM.

11 22 1. Each licensed pharmacy shall implement or participate  
11 23 in a continuous quality improvement program to review pharmacy  
11 24 procedures in order to identify methods for addressing  
11 25 pharmacy medication errors and for improving patient use of  
11 26 medications and patient care services. Under the program,  
11 27 each pharmacy shall assess its practices and identify areas

11 28 for quality improvement.  
11 29 2. The board shall adopt rules for the administration of a  
11 30 continuous quality improvement program. The rules shall  
11 31 address all of the following:  
11 32 a. Program requirements and procedures.  
11 33 b. Program record and reporting requirements.  
11 34 c. Any other provisions necessary for the administration  
11 35 of a program.  
12 1 3. Any record or report generated solely for and  
12 2 maintained by a pharmacy as a component of the pharmacy's  
12 3 continuous quality improvement program shall not be subject to  
12 4 discovery in any civil proceeding. However, this subsection  
12 5 shall not prohibit the board or other authorized government  
12 6 agency from reviewing or having access to the record or report  
12 7 as necessary to protect the public health and safety.

#### 12 8 EXPLANATION

12 9 This bill makes several technical and substantive changes  
12 10 regarding Code chapter 155A relating to the practice of  
12 11 pharmacy.

12 12 The bill makes changes to definitions applicable to the  
12 13 Code chapter. The bill expands the definition of "dispense"  
12 14 to include the delivery of a device, and makes several other  
12 15 conforming changes in the Code chapter adding a reference to  
12 16 "device" where a prescription drug is referred to. The bill  
12 17 also provides a new definition of "pedigree" to mean a  
12 18 recording of each distribution of any given drug or device,  
12 19 from the sale by the manufacturer through acquisition and sale  
12 20 by any wholesaler, pursuant to rules adopted by the board of  
12 21 pharmacy examiners. The bill adds "over-the-counter medicine"  
12 22 as an alternative term to "proprietary medicine" with  
12 23 reference to a nonnarcotic drug or device that may be sold  
12 24 without a prescription, and adds two new labeling statements  
12 25 required under federal law prior to dispensation or delivery.

12 26 The bill provides that the application form submitted by an  
12 27 applicant for a pharmacy license shall include information  
12 28 specified in the statute, and other information that may be  
12 29 required by the board by rule, and that the board may define  
12 30 specific types of wholesaler licenses.

12 31 The bill provides that a drug wholesaler shall report in  
12 32 writing to the board information relating to the permanent  
12 33 closing or discontinuation of wholesale distributions into the  
12 34 state, a change of ownership or location, a change concerning  
12 35 the individual designated as the wholesaler's responsible  
13 1 individual, a change of name, the theft or significant loss of  
13 2 any controlled substance on discovery of the theft or loss,  
13 3 any disasters, accidents, and emergencies that may affect the  
13 4 strength, purity, or labeling of drugs, medications, devices,  
13 5 or other materials used in the diagnosis or the treatment of  
13 6 injury, illness, and disease, and other information or  
13 7 activities as required by rules of the board.

13 8 The bill extends prohibitions against the use of the word  
13 9 "apothecary", "drug", "drug store", or "pharmacy" by  
13 10 individuals other than licensed pharmacists or wholesalers, to  
13 11 internet sites, and to any advertising or promotional  
13 12 literature, communication, or representation.

13 13 The bill adds a number of new provisions regarding acts  
13 14 which are unlawful for a person to perform, or cause the  
13 15 performance of, or aid and abet, and therefore prohibited.  
13 16 The bill provides that a person shall not engage in forging,  
13 17 counterfeiting, simulating, or falsely representing any drug  
13 18 or device without the authority of the manufacturer, or using  
13 19 any mark, stamp, tag, label, or other identification device  
13 20 without manufacturer authorization; or engage in  
13 21 manufacturing, repackaging, selling, delivering, or holding or  
13 22 offering for sale any drug or device that is adulterated,  
13 23 misbranded, counterfeit, suspected of being counterfeit, or  
13 24 that has otherwise been rendered unfit for distribution; or  
13 25 engage in adulterating, misbranding, or counterfeiting any  
13 26 drug or device; or receive any drug or device that is  
13 27 adulterated, misbranded, stolen, obtained by fraud or deceit,  
13 28 counterfeit, or suspected of being counterfeit; or deliver or  
13 29 proffer delivery of such drug or device for pay or otherwise.  
13 30 Further, the bill provides that a person shall not engage in  
13 31 adulterating, mutilating, destroying, obliterating, or  
13 32 removing the whole or any part of the labeling of a drug or  
13 33 device or committing any other act with respect to a drug or  
13 34 device that results in the drug or device being misbranded; or  
13 35 engage in purchasing or receiving a drug or device from a  
14 1 person that is not licensed to distribute the drug or device  
14 2 to that purchaser or recipient; or engage in selling or  
14 3 transferring a drug or device to a person that is not

14 4 authorized under the law of the jurisdiction in which the  
14 5 person receives the drug or device to purchase or possess it;  
14 6 or fail to maintain or provide required records.

14 7 Additional prohibited acts include providing the board or  
14 8 any of its representatives or any state or federal official  
14 9 with false or fraudulent records or making false or fraudulent  
14 10 statements; distributing at wholesale any drug or device that  
14 11 was purchased by a public or private hospital or other health  
14 12 care entity, donated or supplied at a reduced price to a  
14 13 charitable organization, purchased from a person not licensed  
14 14 to distribute it, or stolen or obtained by fraud or deceit;  
14 15 failing to obtain a required license or operating without a  
14 16 valid license; and engaging in misrepresentation or fraud in  
14 17 the distribution of a drug or device.

14 18 Finally, prohibited acts also include distributing a drug  
14 19 or device to a patient without a prescription drug order or  
14 20 medication order from a practitioner licensed by law to use or  
14 21 prescribe the drug or device; distributing a drug or device  
14 22 that was previously dispensed by a pharmacy or distributed by  
14 23 a practitioner except as provided by rule; and failing to  
14 24 report any prohibited act.

14 25 The bill also expands the list of penalties contained in  
14 26 Code section 155A.24. The bill provides that a wholesaler  
14 27 shall be guilty of a class "C" felony if the wholesaler, with  
14 28 intent to defraud or deceive, fails to deliver to another  
14 29 person, when required by rules of the board, complete and  
14 30 accurate pedigree concerning a drug prior to transferring the  
14 31 drug to another person; or with intent to defraud or deceive,  
14 32 fails to acquire, when required by rules of the board,  
14 33 complete and accurate pedigree concerning a drug prior to  
14 34 obtaining the drug from another person; or who knowingly  
14 35 destroys, alters, conceals, or fails to maintain, as required  
15 1 by rules of the board, complete and accurate pedigree  
15 2 concerning any drug in the person's possession; or who is in  
15 3 possession of pedigree documents required by rules of the  
15 4 board, and who knowingly fails to authenticate the matters  
15 5 contained in the documents as required, and who nevertheless  
15 6 distributes or attempts to further distribute drugs; or with  
15 7 intent to defraud or deceive, falsely swears or certifies that  
15 8 the person has authenticated any documents related to the  
15 9 wholesale distribution of drugs or devices. Additionally, the  
15 10 bill provides that a wholesaler shall be guilty of a class "C"  
15 11 felony if the wholesaler knowingly forges, counterfeits, or  
15 12 falsely creates any pedigree, who falsely represents any  
15 13 factual matter contained in any pedigree, or who knowingly  
15 14 omits to record material information required to be recorded  
15 15 in a pedigree; or knowingly purchases or receives drugs or  
15 16 devices from a person not authorized to distribute drugs or  
15 17 devices in wholesale distribution; or knowingly sells,  
15 18 barter, brokers, or transfers a drug or device to a person  
15 19 not authorized to purchase the drug or device under the  
15 20 jurisdiction in which the person receives the drug or device  
15 21 in a wholesale distribution.

15 22 The bill provides, in addition, that a person who knowingly  
15 23 possesses, actually or constructively, any amount of a  
15 24 contraband drug or device, who knowingly sells or delivers any  
15 25 amount of a contraband drug or device, or who possesses with  
15 26 intent to sell or deliver any amount of a contraband drug or  
15 27 device, shall be guilty of a class "C" felony, as is a person  
15 28 who knowingly forges, counterfeits, or falsely creates any  
15 29 label for a drug or device or who falsely represents any  
15 30 factual matter contained in any label of a drug or device, or  
15 31 who knowingly manufactures, purchases, sells, delivers, or  
15 32 brings into the state, or who is knowingly in actual or  
15 33 constructive possession of any amount of a contraband drug or  
15 34 device. Further, a person who knowingly manufactures,  
15 35 purchases, sells, delivers, or brings into the state, or who  
16 1 is knowingly in actual or constructive possession of any  
16 2 amount of a contraband drug or device, and whose acts result  
16 3 in the death of a person, shall be guilty of a class "A"  
16 4 felony.

16 5 The bill provides for the forfeiture to and seizure by the  
16 6 state of any real or personal property of a person found  
16 7 guilty.

16 8 The bill authorizes the board to request criminal history  
16 9 data for applicants, licensees, and registrants under Code  
16 10 chapter 147 or 155A, for the purpose of evaluating the  
16 11 person's eligibility for the license or registration or to  
16 12 evaluate the person's suitability for the practice of the  
16 13 profession.

16 14 The bill requires each licensed pharmacy to implement a

16 15 continuous quality improvement program to review pharmacy  
16 16 procedures in order to identify methods for addressing  
16 17 pharmacy medication errors and for improving patient use of  
16 18 medications and patient care services. The bill provides that  
16 19 the board shall adopt rules for the administration of the  
16 20 program.  
16 21 LSB 1292DP 81  
16 22 rn:nh/pj/5